ONE YEAR UNDER THE NEW FEDERAL EQUITY RULES.

THE new federal equity rules promulgated November 4, 1912, by the United States Supreme Court, effective February 1, 1913, have been subjected to close scrutiny and many rigorous tests during the initial year's period of their existence.

Notwithstanding the fact that numerous attorneys felt that the changes made by these rules were of such a radical nature as to seriously handicap the proper trial of equity causes and in some instances to entirely defeat the ends of justice, these rules are not working any real hardships. Where consistently and fairly administered, they are securing the ends sought, *viz.*, that of securing a more speedy termination of equity litigation with the minimum of expense to the litigants.

In enacting the new rules it is fortunate indeed that the Supreme Court saw fit to follow, where practicable, the old equity rules, for the latter undoubtedly embodied the simplest, most direct, flexible and adequate judicial system that had been contrived.

The old rules gave the court wide discretion in causing cases to be brought to a speedy termination. Most of the abuses arising under the old rules grew out of the negligence or the indisposition of client or counsel in bringing the causes to an early hearing. Under the old rules, however, if the court, the litigants and their counsel were all equally anxious to bring a case to an early hearing, it could be done quite as quickly and advantageously as under the new equity rules.

Under the new rules, counsel must keep closely in touch with their pending cases, for these rules specify the time when causes shall be put upon the calendar. If not tried when called, they are dropped from the calendar, and at the end of a year thereafter, unless reinstated by the court on application duly made, are dismissed without prejudice.[1]

An equity case may now be generally disposed of within five months, for under the new rules a defendant is given twenty days

[1] Federal Equity Rules 56 and 57.

in which to file his answer after being served with subpœna, and, unless some additional pleading is filed by complainant, the case is then at issue. The complainant has sixty days after the filing of the answer in which to take and file his depositions, and the defendant thirty days thereafter in which to take and file depositions, and twenty days thereafter is allowed both parties in which to take and file depositions in rebuttal. This gives the parties one hundred and ten days to get the case ready for trial in open court.

This change in the rules is important mainly in having cases automatically placed upon the trial calendar.

Under the new equity rules a very large number of old cases have been wiped out and the court calendars cleared of dead and long slumbering causes.

Public sentiment, and the fact that the federal judges generally are anxious to finally dispose of cases, is bringing about a radical change in the practice and has caused equity litigations to be terminated in a much shorter time during the past year than during previous years. This change is undoubtedly greatly augmented by the promulgation of the new equity rules quite as much as by any other cause, although public sentiment largely influenced the prompt disposition of cases in many instances prior to the adoption of these rules. This public sentiment was largely due to the following causes:

First, the proposed recall of judges and of judicial decisions.

Second, the constant and aggressive advocacy by ex-President Taft of the necessity for reforms along this line.

Third, the complaint on the behalf of litigants themselves due to the expense of protracted litigations and to the fact that their rights were in many instances entirely cut off because the decisions were so long delayed.

Fourth, that court and counsel who were desirous of disposing of litigations felt that rules of a more mandatory character would be exceedingly beneficial in securing shorter and more speedy trials.

Judges who are willing to hear and decide their cases promptly (and it is fortunate that so large a per cent of the eminent jurists who now constitute and grace our federal bench are doing this) are securing excellent, quick and decisive results for litigants under the new rules. The few courts who persist in withholding their opinions for a year or more after the final hearing are not pre-

vented from so doing by the new rules, and are reaping their own reward in the severe criticism that is being heaped upon them in Congress, by other judges, by lawyers generally and by the public at large.

The action of a few of our federal judges in failing to promptly decide cases after they have been submitted on final hearing is in some instances entirely destroying the rights of litigants who are so unfortunate as to have been compelled to try their cases before them. The new rules are entirely inadequate to prevent such delays, for, once the cause is submitted to the chancellor, there is nothing in them compelling prompt action on his part.

It is fortunate indeed for all concerned, and for the reputation of our federal judiciary, that instances of judicial procrastination in rendering decisions are extremely rare, and that such United States District Court judges are very few in number. Such men work a great injustice to the public at large and to the large majority of their conscientious and energetic contemporaries. The federal courts generally are administering the new rules in accordance with the aims of those who caused them to be adopted.

The courts of appeals without exception are uniformly promptly disposing of the cases coming before them, and are in full accord with the intent and spirit of the new rules. It is extremely gratifying to the litigants and the bar generally, that decisions are so promptly handed down after being submitted to the appellate courts.

The advance criticism of eminent lawyers that the present number of judges would be inadequate to try equity causes in open court has proven true, for, in the busier districts, calendars are congested, and this must necessarily be so until more judges are provided. In spite of the arduous work that is being done by our conscientious federal judges in the busy districts, and the vast amount of time which they are expending, oftentimes with great detriment to their health, it is impossible for them to keep up with their calendars.

The provision which enables judges from any part of the country to be assigned to different districts, and the assistance rendered by the circuit judges from the abolished Court of Commerce, has helped materially, but has not relieved the situation entirely.

Any radical change in court procedure necessarily involves a great deal of expense to litigants during the early stages of the administration of the new rules of procedure. It also requires a great deal of time of court and counsel in applying these rules to the various causes which come before them, but I think it can be fairly said that the new federal equity rules have caused as little inconvenience to the public, to the bar and to the judges as any rules that could be adopted involving so great a change in practice.

Where it is possible to do so, the courts are evidently being guided in their interpretation of the new rules by the numerous decisions under the old rules, and it is well that they are doing so, for the old rules had been passed upon during a period of a great many years by many able jurists.

Many of the decisions and orders made under the new rules have not been reported, as they are entered after preliminary hearings; nevertheless these have a very important bearing on litigations in the various courts where the causes are pending. Some of the more important of these rulings will be referred to in the attempt to point out what is happening in the administration of equity practice under these rules.

The rules [2] requiring an answer in an equity cause to be filed within twenty days after the subpœna is served, would, in many instances, work a serious handicap to the defendant should the court be so illiberal as not to extend the necessary time to permit the securing of counsel and gathering legitimate defenses together. For instance, the party contemplating a suit may, without any notice to the defendant, fully prepare himself for trial prior to the filing of the bill; he may have taken many months in getting his information together; the suit may then be filed and the defendant may be served and compelled to make extensive investigations before he is prepared to file his answer. This is particularly true of defendants in patent suits where the defensive material may be scattered throughout the country and in remote parts, in the guise of prior patents, publications or prior public uses.

In the large majority of instances, the courts have appreciated this difficulty and have given to the defendant, on proper showing, sufficient additional time in which to prepare for and file his

[2] Federal Equity Rules 12 and 16.

answer. Attorneys have also adopted the practice in numerous causes of stipulating an extension of time, and, prior to the expiration of the twenty days during which the answer must be filed under the rules, secured the approval of the stipulation by the court before whom the case is pending, and have accomplished satisfactory results thereby.

In one case,[3] however, which has been called to the writer's attention, the defendants failed to answer within the time specified by the rules,[4] and immediately thereafter filed a petition setting up the following facts: that the summons was served on one of defendants' officers when he was on his way to the train for the purpose of meeting an important business engagement in the west; that he gave the summons to his son to be given to his attorneys; that by an oversight no appearance was entered nor answer filed. A petition was filed by the defendants asking leave under the circumstances to answer. This petition was denied.

The equity rules do not contemplate the deprivation of defendant of his rights to be heard under such circumstances as these, as has been recognized by most of the courts before whom this question has come under this rule. Had the judges generally been illiberal in granting an extension of time in which to answer, great hardships would often have been incurred, for in many cases the securing of proper counsel to make a defense, in an intricate cause, has necessitated the spending of several days' time, to say nothing of the large amount of time that has been necessary to develop proper defenses after securing counsel. If the courts are liberal in granting extensions in the proper cases, such a rule is not a harsh one, and in some instances no hardship would be worked by requiring the defendant to answer in so short a period of time, particularly if he had notice sufficiently in advance of the filing of the bill. If the defendant is to be cut off entirely from his rights to be heard on account of his inability or failure to file a proper answer within twenty days, as in the instance above referred to, much better results would be universally secured by giving the defendant more time in which to file his answer. This would also save the necessity of applying to the court for an extension of time

[3] N. S. Snyder *et al. v.* Brast Hotel Co. *et al.*, brought in the Federal Court at Phillippi, West Virginia.

[4] Federal Equity Rule 12.

in such a large number of cases as has been necessary since the rule was enacted.

The rule [5] permitting amendments on proper showing to pleadings, however, lessens the rigor of rules 12 and 16 considerably, and such amendments are being frequently filed.

Another new rule of considerable importance, and intended to prevent the dismissal of causes brought on the equity side of the court when they should have been started on the law side, or *vice versa*,[6] is to some extent saving time and expense in litigations. In a suit brought in Utah,[7] the defendant filed a motion to dismiss the bill of complaint on the ground that the plaintiff was not entitled to maintain a suit in equity because it had an adequate remedy at law by ejectment. Under the old rules the equity cause would have been dismissed, but under the new rules the court, in overruling the motion there brought, holds that the equity suit should not be dismissed, and that "the objection, if well taken, is only ground for the transfer of the suit to the law side of the court and does not justify a dismissal."

This ruling seems to be entirely in accord with the spirit of the new rules, and accomplishes the results intended by them, and saves litigants considerable time and expense.

The new rule, intended to simplify and abbreviate pleadings,[8] was universally approved by the prominent attorneys who were selected to make suggestions to the Supreme Court as to the needed changes in the equity rules. This rule is cutting down the length of bills of complaint very materially, and in a number of instances very short forms of bills distinctly stating the cause of action have been held sufficient.[9] An illustration of this is, that under the old practice it was necessary in patent causes to plead substantially the language of sections 4883, 4886 and 4887 of the Revised Statutes, and a bill was demurrable which did not specifically plead the substance of these statutes. Under the ruling of Judge Tuttle of the Eastern District of Michigan, in the Carburetor Company case cited, it is unnecessary to plead these statutes

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[5] Federal Equity Rule 19.

[6] Federal Equity Rules 22 and 23.

[7] United States *v.* Utah Power & Light Co., 208 Fed. 821 (1913).

[8] Federal Equity Rule 25.

[9] Zenith Carburetor Co. *v.* Stromberg Motor Devices Co., 205 Fed. 158 (1913).

at the present time, and it appears that the language of his opinion is in accordance with the intention of the Supreme Court in promulgating this rule, and the attorneys who drew it well deserve the commendation of the learned judge, who says:

"It strikes me that counsel for complainant, in adopting the language found in the opening paragraph of his bill, has conformed in a most gratifying degree to the language and intent of the new equity rules by simplifying and abbreviating his bill."

The bill which this judge had before him is set out in a leading authority on Federal Practice as a model for the modern bill of complaint in equity in a patent cause,[10] although the author is compelled to say of it, that

"Whether such a form would be approved by another court cannot be foretold."

and in doing so refers to a decision of another court,[11] which holds in effect that this new equity rule [12] does not abrogate the established rule in cases involving the infringement of patents requiring the bill to plead the allegations of the statutes under which patents are granted, and all the facts necessary to show that the patentee was entitled to the patent and to negative the existence of those facts which would defeat it.

It is impossible to entirely reconcile the decisions in other cases, reported [13] and unreported, with the cases cited in connection with this rule, but the majority of such opinions as I have been able to get in touch with hold that the simple form of bill, approved by Judge Tuttle in the Carburetor Company case, is adequate and to be commended.

The question of the sufficiency of the bill, in the various cases to which attention has been called, has been raised by motion to dismiss,[14] which, under the decisions of various of the courts, comprehends within its broad scope the technical pleadings under the old rules known as demurrers, pleas, exceptions and the like.

This motion has been successfully used in raising the question

[10] Foster's Federal Practice, 5 ed., Vol. 3, p. 2581.

[11] Maxwell Steel Vault Co. *v.* National Casket Co., 205 Fed. 515 (1913).

[12] Federal Equity Rule 25.

[13] Wilson *v.* American Ice Co. *et al.*, 206 Fed. 736 (1913).

[14] Federal Equity Rule 29.

of the sufficiency of the bill, and a motion to strike out [15] in challenging matter not properly pleadable in an answer, and also to secure a ruling upon a single affirmative issue not set up in the bill which might have been raised by plea under the old rules. It has probably been under consideration by the courts quite as many times as any of the new rules, because of the extent to which it has been utilized by counsel in equity causes.

While it has always been possible for the plaintiff to file interrogatories in a bill of complaint in an equity cause, and in some instances for the defendant to make use of interrogatories, the new rules specifically provide for the use of interrogatories, both by the plaintiff and the defendant, for the discovery of facts, and for the inspection and production of documents material to the support of the cause of action or defense.[16] Some aggressive attorneys are constantly filing such interrogatories, often with beneficial and sometimes with detrimental results.

A recent case [17] decided by the Court of Appeals of the Seventh Circuit is a striking illustration of the benefit to be derived by filing interrogatories and a motion to dismiss the bill, as these obviated the necessity of taking evidence. In this case the plaintiff filed his bill for the infringement of a patent on a protector or apron. The defendant filed its answer and attached thereto samples of each of the aprons it was manufacturing and selling, and by interrogatory asked the plaintiff which of the aprons referred to in the answer was an infringement of the patent sued on. In response to the interrogatory in question, the plaintiff specified certain of the aprons referred to in the answer, whereupon the defendant moved to dismiss the bill on the ground that the aprons did not infringe the patent sued on.

After hearing the arguments, the lower court sustained the motion, held no infringement and dismissed the bill. From the decree dismissing the bill an appeal was taken to the Court of Appeals, the latter affirming the lower court.

The rules [18] governing what may be included in the answer have been the subject of much contention among attorneys, and such courts as have passed upon them are not in harmony.

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[15] Federal Equity Rule 33.

[16] Federal Equity Rule 58.

[17] Bronk *v.* Charles H. Scott Co., C. C. A. 7th Cir., Oct. Term, 1913 (not yet reported).

[18] Federal Equity Rules 30 and 31.

In numerous instances the defendant has attempted to plead in its answer affirmative matters entirely independent of and not in any way arising out of the cause of action set up in the bill. Some courts hold that any controversy between the parties, whether relating to the same subject-matter or not, may be litigated in the same suit. Other courts hold that any affirmative relief asked for in the answer must be germane to or arise out of the original proceeding. These latter courts are seemingly in the majority.

Most of the decisions under this Rule 30 have been in patent, trade-mark or unfair competition cases, where the plaintiff was asserting rights under his statutory grant and the defendant in his answer has either asked affirmative relief against the plaintiff for infringement of a separate and independent patent owned by him, or has attempted to sue the plaintiff in its answer for unfair competition in trade.

The situation usually arises as follows: A. brings suit against B. for the infringement of a patent. B., after answering the bill, sets up the necessary allegation for charging A. with infringement of a patent or trade-mark owned by him or for unfair competition arising out of the advertising of plaintiff's patent. The plaintiff then files a motion to dismiss or strike out the action brought by B. in his answer,[19] whereupon the court hears this motion and either permits the suit by defendant to go on, or dismisses it, or strikes all allegations concerning it from the answer.

One line of cases originating in the First Circuit [20] decided that

"The provision of Rule 30 of the new rules in equity that an answer 'may, without cross-bill, set out any counterclaim against the plaintiff which might be the subject of an independent suit in equity against him,' applies only to a counterclaim proper, arising out of the transaction which is the subject-matter of the suit."

and holds that the language of this rule that

"the answer must state in short and simple form, any counterclaim arising out of the transaction which is the subject-matter of the suit."

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[19] Under Federal Equity Rule 30.

[20] Judge Dodge, District of Massachusetts, in Terry Steam Turbine Co. *v.* B. F. Sturtevant Co., 204 Fed. 103 (1913).

applies to the last portion of this section of the rule in exactly the same way as it does to the first portion thereof. Judge Dodge, who decided this matter in the First Circuit, very tersely states his conclusions regarding this rule when he says:

"I must therefore regard the provision, 'and may, without cross-bill, set out any set-off or counterclaim,' etc., as applying only to any such counterclaim as is described in the words immediately preceding; *i. e.*, any counterclaim arising out of the transaction which is the subject-matter of the suit. That the defendant's proposed counterclaim is not of this character is obvious. He could not have set it up by cross-bill."

It would seem that there was ample justification for this decision in the rule immediately following,[21] for in it the Supreme Court only permits the plaintiff ten days in which to reply to any "set-off or counterclaim" included in the answer. Inasmuch as the defendant originally has twenty days in which to file its answer, it would seem obvious that, had the Supreme Court intended to allow the defendant to bring suit in its answer on a subject-matter entirely foreign to that arising out of the original proceeding, it would have given the plaintiff the same time to "reply" as it did the defendant. There are a number of reported and unreported decisions which follow, augment and support the ruling of Judge Dodge.[22]

There are also some cases which do not directly decide the point, but tend to support the reasoning in the above cases and have a more or less pertinent bearing on the subject-matter.[23]

One of the leading cases holding that the defendant may set up in his answer "any independent cause of action" regardless of its relation to the original suit,[24] had to do with a counterclaim set up in an answer in a patent infringement suit, in which the plaintiff was charged with having circulated false statements about the

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[21] Federal Equity Rule 31.

[22] Judge Hazel (N. Y.) in Williams Patent Crusher & P. Co. *v.* Kinsey Mfg. Co., 205 Fed. 375 (1913); Judge Geiger (Wis.) in Adamson *v.* Shaler, 208 Fed. 566 (1913); Judge Carpenter (Ill.) in Kawneer Mfg. Co. *v.* Hester Mfg. Co. (unreported).

[23] Judge Martin (Vt., sitting in Conn.) in Salt's Textile Mfg. Co. *v.* Tingue Mfg. Co., 208 Fed. 156 (1913); Judge Rellstab (N. J.) in Motion Picture Patents Co. *v.* Eclair Film Co., 208 Fed. 416 (1913).

[24] Judge Lacombe (N. Y.) in Vacuum Cleaner Co. *v.* Amer. Rotary Valve Co., 208 Fed. 419 (1913).

defendant's device and had threatened its customers with suits which it had no intention of bringing. The learned judge, in overruling the motion to strike the so-called counterclaim, says:

"It is prayed that further interference of this sort with defendant's business be enjoined and that it have damages for any loss already sustained by the circulation of these statements and threats. This may or may not be a good cause of action; it may or may not be susceptible of proof; it can hardly be said to arise out of the transaction which is the subject-matter of the suit. But it does fall within the second category of counterclaims allowable under New Equity Rule 30, since it 'might be made the subject of an independent suit in equity against the plaintiff.'"

This case is supplemented by others, one of which [25] more fully states the reasons upon which the court in the Turbine Company case, above referred to, evidently based its conclusions. Other unreported orders [26] overruling such motions have been entered without any reasons being given for such action.

Attorneys quite generally, and some of the courts, seem to feel that, should the latter line of authorities be adhered to, litigations, and particularly those involving complicated legal and mechanical matters, would be so cumbersome as to defeat the purpose of the rules and in some instances the rights of litigants.

Perhaps the most radical of all changes in the new rules, and the one most strenuously opposed by numerous attorneys prior to its adoption, was the provision in Rule 46 that

"In all trials in equity, the testimony of witnesses shall be taken orally in open court except as otherwise provided by statute or by these rules."

the only exceptions to this rule being that for good and exceptional cause the court could permit depositions to be taken before an examiner, and that evidence could be taken under the Revised Statutes [27] within the time provided by the rules.[28]

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[25] Judge Chatfield (N. Y.) in Marconi Wireless Telegraph Co. *v.* National Electric Signaling Co. *et al.*, 206 Fed. 295 (1913).

[26] Judge McPherson (Iowa) in Amer. Steel Foundry Co. *v.* Bittendorf Co. (unreported).

[27] Revised Statutes, sections 863, 865, 866, 867.

[28] Federal Equity Rule 54.

The rules of some of the district courts [29] adopted under Rule 79, however, provided that cases should be placed upon the calendar "twenty days after the issue was joined, by the filing of the answer, unless an order was filed for the taking of depositions under the Supreme Court Rule 47, or affidavits under Supreme Court Rule 48, or that notice be given to the clerk for the taking of depositions under the Revised Statute," in either of which cases the cause shall not "be placed upon the calendar until the expiration of the time limited by the Supreme Court." [30]

Such supplemental District Court rules in a large majority of cases place a burden upon the parties to secure an order permitting the taking of testimony, for in a large number of cases neither the courts nor the attorneys are ready to try the case within so short a period.

There is considerable lack of uniformity among the decisions on this Rule 46, as well as the ones relating to testimony in patent and trade-mark cases,[31] for some of the courts are permitting the evidence in various cases to be taken before an examiner selected by the parties under an order based upon the stipulation between counsel, and other courts are insistent that all the evidence of expert witnesses, and those residing within one hundred miles of the place of trial, be taken in open court. Courts are likewise exercising a wide discretion as to the admissibility of expert testimony under Rule 46, and are excluding the evidence of experts not sufficiently qualified. There have also been various interpretations as to what constitutes "good and exceptional cause" [32] for departing from this general rule of requiring evidence to be taken in open court. Some of the more busy courts are interpreting this rule with great liberality and allowing the evidence to be taken by deposition if the case is to consume considerable time, while in less busy districts the judges require that all of the evidence not excepted by the rules be taken before them. Most of the orders relating to this rule are unreported, although some have appeared,[33] and others will undoubtedly be printed in future reports.

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[29] Equity Rules of the District Court of the United States, Southern Dist. N. Y., effective February 1, 1913 (Rule 1).

[30] Federal Equity Rules 47 and 56.

[31] Federal Equity Rule 48.

[32] Federal Equity Rule 47.

[33] Judge Ray (N. Y.) in North *v.* Herrick, 203 Fed. 591 (1913).

In the Southern District of New York, a rule [34] has been adopted, which is not generally followed elsewhere, to the effect that an assessor may be appointed by the court "upon consent of all parties" in the trial of a patent cause, "whenever, in the opinion of the court, the cause involves intricate, technical or scientific questions," who "shall sit with the judge at the hearing of the evidence and shall assist the court in its deliberations upon the cause in such a manner as the trial judge may request," and the opinion of the assessor, "at the request of the judge, shall be a portion of the record on appeal."

There are also other rules in the same and other jurisdictions interpreting the general equity rules as to what may be set up in affidavits to be filed and similar matters.

The main difficulty to the practitioner, under the new rules, is in ascertaining the practice adopted in the various districts, for the reason that but few of the orders made relative to these rules are reported, and only local counsel, who are actively and constantly in touch with the federal court procedure, can be well informed concerning the way in which a particular case has to be handled.

In most instances, there is the necessity of employing local counsel thoroughly acquainted with the federal court practice in the particular district where he resides, which adds considerably to the expense of many litigations. In some very busy jurisdictions, where the evidence is taken entirely before the courts, the day of final hearing is being postponed indefinitely, and this can only be remedied by providing for the appointment of additional judges where needed.

The Supreme Court, in enacting rules relative to the production and preparation of records on appeal, has provided that the evidence taken in a cause "shall not be set forth in full, but shall be stated in simple and condensed form," and has also provided as to the manner in which the record shall be thus reduced and penalties for infraction of this rule [35] by attorneys and parties. In a great many cases, however, where the complete evidence has been printed below, both the trial court and the Court of Appeals have

[34] Equity Rules of the District Court of the United States, Southern Dist. of N. Y., effective Feb. 1, 1913 (Rule 6).

[35] Federal Equity Rules 75, 76 and 77.

under the Act of Congress of February 13, 1911, consented to the filing of the record as used below, as the Transcript on Appeal, and have thereby complied with the spirit of the rules in saving the expense of transcribing and reprinting of the District Court record for the Appellate Court.

In some cases the courts of appeals have dealt summarily with counsel who have failed to reduce the record to proper proportions, by taxing the costs of reducing the record to them personally.

In one instance plaintiff's counsel, in a patent case, had caused to be bound in the appeal record a large number of patents taken out by the patentees of the patent sued on, simply to show that he was a prolific inventor, and the court, upon discovering this, ordered the record to be dismembered, all of the patents set up by the plaintiff except the one in suit to be physically removed from the record, and the record re-bound at the expense of the solicitor. This secured a reduction of the record to the extent of over three hundred pages.

To some courts, and a great many attorneys, the advantages of the reduction of the record on appeal by abstracting are not apparent, for evidence appearing in narrative form has an entirely different probative force than when appearing in the proper setting of question and answer with the objections noted, and may cause the Appellate Court to reach an entirely different conclusion than if it had examined the record in the question and answer form. The expense is oftentimes much increased by this procedure, as the abstracts are being contested in many cases. The way that the courts of appeals are treating this rule, however, makes it less objectionable than those opposed to its terms anticipated.

On the whole, it may be fairly said that the influence of the new rules is toward getting the old causes on the calendars cleaned up, disposing of all inactive cases and actually trying those which have been filed since the rules went into effect.

The Supreme Court has brought about the general result of speeding equity causes and lessening the expense of the trial of these cases by the new rules; its interpretation of the statutes which it has passed upon has also greatly eliminated the expense of preparing appellate records,[36] and thus to some extent further

[36] Rainey *v.* Grace & Co., 231 U. S. 703, 34 Sup. Ct. 242 (1914).

removed one of the most useless and unjustifiable costs in federal equity procedure.

The Supreme Court has likewise done everything in its power to clear its own docket of pending cases. Current reports show that instead of waiting for approximately three years before hearing a case pending before it, a hearing may be now had in about a year after the appeal is perfected.

Such action on the part of the Supreme Court itself is in many instances doing quite as much to stimulate prompt action in the disposition of equity causes as the rules promulgated by it.

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